IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1854 OF 2002

IN

S.C.SUIT NO. 639 OF 2000

The Bandra Rang Mahal Co-op.
Housing Society Ltd. and Ors. .. Plaintiffs

Vs.

M/s.Jayshree Builders and Ors. .. Defendants

Mr.P.V.Palan for the plaintiffs

Mr.P.N.Mody i/b Narayanan and Narayanan for the defendants

CORAM : S.U.KAMDAR, J
DATED : 25TH AUGUST, 2005

P.C.:

1. The present suit is filed for the recovery of sum of Rs.1,28,58,520/- with interest thereon @ 24% p.a. on the principal amount of Rs.1,10,00,000/-. The suit is only for money decree. This claim is based on the contention of the plaintiffs that defendants have used more FSI then entitled to under the agreement and for such use of extra FSI defendants are required to compensate the plaintiffs. However, defendant no.1

contends that the amount actually due and payable in respect of the said extra FSI is now determined by them and the compensation for the same only comes to Rs.10,62,456/-. It is thus contended by the defendants by the present Notice of Motion that they are willing to deposit the said amount of Rs.10,62,456/- and on such deposit 2 flats which are reserved as security for the said claim pursuant to an interim order dt.24.1.2001 passed in Notice of Motion No.641 of 2000 to be vacated and the defendants should be permitted to deal with the said flats. It is not possible to grant the said relief.

2. The plaintiffs do not admit the computation put forward by the defendants and the amount offered as correct amount. According to the plaintiffs, they are entitled to about Rs.1.28 crores and further interest. I am of the opinion that the said two flats can be released only if the defendants deposit in this court a sum of Rs.2 crores. The learned counsel for the defendants on instruction agrees to such deposit of Rs.2 crores

in this court within a period of 8 weeks from today. I am of the further opinion that the aforesaid deposit will fully protect the claim of the plaintiffs in the suit thus on such deposits flats reserved could be released. I therefore, pass the following order:

3. That the two flats which are reserved on 3rd floor under order dt.24.1.01 be released only on deposit of Rs.2 crores by defendant no.1 with the Office of the Prothonotary and Senior Master, High Court, Mumbai. Such deposit to be made within 8 weeks from today. If such deposit is not made the order dt.24.1.01 to continue till the hearing and final disposal of the suit and the flats to be kept intact. If such deposit is made the said flat be released and defendant no.1 and 2 will be entitled to deal with or dispose off the said flats. Prothonotary and Senior Master is directed to invest the said sum of Rs.2 crores in the Fixed Deposit with any Nationalised Bank for a period of 3 years and the same will be renewed from time to time alongwith acrued interest till further orders. Motion disposed of accordingly.